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Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 3, 2020

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o North Central Bronx Hospital
[REDACTED]
3424 Kossuth Avenue
Bronx, New York 10467

[REDACTED] [REDACTED] SW
North Central Bronx Hospital
[REDACTED]
3424 Kossuth Avenue
Bronx, New York 10467

Sandra Berkoh, DSW
Morris Park Nursing Home
1235 Pelham Parkway
Bronx, New York 10469

RE: In the Matter of [REDACTED] - Discharge Appeal

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter. This Decision is final and binding.

The party who did not prevail in this hearing may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the party wishes to appeal this decision it may seek advice from the legal resources available (e.g. their attorney, the County Bar Association, Legal Aid, etc.). Such an appeal must be commenced within four (4) months from the date of this Decision.

Sincerely,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

[REDACTED]

Appellant,

from a determination by

MORRIS PARK REHABILITATION &
NURSING CENTER

Respondent,

to discharge her from a residential health
facility.

COPY

DECISION

On [REDACTED] [REDACTED] 2019, Morris Park Rehabilitation & Nursing (Facility) discharged resident [REDACTED] [REDACTED] (Appellant) to North Central Bronx Hospital (the hospital), located at 3424 Kossuth Avenue, Bronx, New York. The Appellant's [REDACTED] [REDACTED], appealed the discharge on the Appellant's behalf. On January 29, 2020, a hearing was held at the hospital before Dawn MacKillop-Soller, Administrative Law Judge.

The Appellant was not present. Her [REDACTED] and health care surrogate, [REDACTED] [REDACTED], appeared and testified on her behalf. The Facility was represented by Susan Dempsey, Director of Nursing. Sandra Berkon, Director of Social Services, and Ms. Dempsey testified on behalf of the Facility. The hospital participated in this hearing in support of the

Appellant's appeal, and was represented by James Weisbard, M.D. Sunita Mohabir, psychologist, [REDACTED] [REDACTED] psychology extern, [REDACTED] [REDACTED] social worker, Veeresh Bajaj, M.D., [REDACTED] [REDACTED] RN, and Dr. Weisbard testified on behalf of the hospital. Evidence was received (ALJ I, Facility Exhibits 1-5, hospital Exhibits A-D). The hearing was digitally recorded. [Recording 1 @ 1-2:03:45; 2 @ 1-33; 3@ 1-3:44.]

Summary of Facts

1. Morris Park Rehabilitation & Nursing Center is a nursing home located in Bronx, New York.
2. Appellant [REDACTED] [REDACTED], age [REDACTED] was admitted from [REDACTED] [REDACTED] [REDACTED] Hospital to the Facility's long-term care unit on [REDACTED] 2019 with diagnoses of [REDACTED] [REDACTED] [REDACTED] and [REDACTED] Her [REDACTED] medications included [REDACTED] and [REDACTED]. She is ambulatory, [REDACTED] and a fall risk. [Exhibit 1; Recording 52:58.]
3. In the long-term care unit, the Appellant exhibited [REDACTED] [REDACTED] and [REDACTED] and [REDACTED] [REDACTED] towards staff and other residents. On two occasions in [REDACTED] and [REDACTED] of 2019, following incidents where she [REDACTED] her roommate and attempted to [REDACTED] another resident, the Facility transferred the Appellant to the emergency

department at [REDACTED] Hospital for [REDACTED] evaluation. In both instances, she was discharged from the emergency room to the Facility in stable condition. [Exhibits 1, 2 and 4; Recording 52:30-56:29, 58:26-1:00:44.]

4. On [REDACTED], 2019, the Facility issued a notice of discharge to the Appellant's [REDACTED]. It stated that "transfer/discharge" is necessary due to the Appellant's behaviors "that have put the health and safety of other resident(s) at risk, including an incident where Mrs. [REDACTED] assaulted another resident causing that resident to be transferred to the emergency room." It also states that the Appellant "will not be accepted back to (the Facility) due to past and current behavior which our team feels causes imminent danger to other residents." [ALJ I.]

5. On [REDACTED], 2019, the Facility transferred the Appellant to North Central Bronx Hospital, where she was admitted for [REDACTED] evaluation. [Exhibit 2.]

6. Hospital [REDACTED] and medical assessments confirm the Appellant is medically stable and does not require continued inpatient care. The hospital determined that the Appellant is ready to return to the Facility. The Facility, however, refuses to accept her return, and has proposed no other discharge plan. [Exhibit I.]

7. The Appellant remains at the hospital pending the

outcome of this hearing.

Issues

Has the Facility established that its determination to transfer the Appellant is necessary and that the discharge plan is appropriate?

Applicable Law

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility.

(a) The resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

...

(3) the safety of individuals in the facility is endangered; or

(4) the health of individuals in the facility is endangered;

...

(ii) ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. The documentation shall be made by: (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph;

...

(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title; and

2. The nursing home has the burden of proof that the discharge was necessary and the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

Discussion

The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] [REDACTED], 2019 with [REDACTED] disorders, including [REDACTED] [REDACTED] and [REDACTED] Disease, and placed in long-term care. The Appellant's behaviors included wandering into other residents' rooms and [REDACTED] behaviors towards staff and other residents. The Facility managed these behaviors by placing the Appellant in a private room and increasing her supervision, and by medication adjustments. The Appellant's [REDACTED] increased, however, and on [REDACTED] 2019, she

█ another resident in the █ █ her █ That same day, the Facility issued its discharge notice due to the Appellant presenting an "imminent danger to herself and to other residents" and transferred her to the hospital. [Exhibits 2 and 4; Recording @ 40:15-41:40, 53:30, 1:14:28.]

In the hospital's emergency room, the Appellant was "█ "█ and "█," requiring █ and █ to decrease her █ She was admitted for stabilization. Psychologist Sunita Mohabir described the Appellant as "acutely ill at admission." The Appellant came under the care of psychiatrist James Weisbard, M.D., who diagnosed her with █, a █ █ affecting the █ responsible for █ and █. According to Dr. Weisbard, this form of █ causes █, █, █ and falls, symptoms exhibited by the Appellant at the Facility. [Exhibit D; Recording @ 57:42, 1:11:22, 1:15:09-1:15:47, 1:23:20-1:23:30.]

Dr. Weisbard's treatment of the Appellant included changing her medications to include █ a drug with therapeutic benefits for █ patients. According to Dr. Weisbard, by █ █ █ █ █ that █ can █ of

██████████ prevent adverse behaviors and correct ██████████
Since taking ██████████ the Appellant's ██████████ and
inappropriate social interactions have abated. [Exhibit A;
Recording @ 1:16:06-1:16:24, 1:21:17-1:22:03, 1:23:40,
1:38:40, 1:39:26, 2:02:31.]

The hospital's ██████████ and medical team agree that
the Appellant is stable to return to the Facility and that
the Facility's nursing home environment is the appropriate
level of care. The Facility, however, refuses to accept the
Appellant back, arguing she remains a threat to other
patients. A facility seeking discharge of a resident who is
hospitalized still requires permissible grounds for
discharge, which the Facility has not established. The
Facility produced no evidence to rebut the hospital's
evidence showing the Appellant is not a danger to the health
or safety of other residents, such as evaluations it performed
of the Appellant during her hospitalization. While a hospital
Patient Review Instrument states "continuous" "██████████
precautions," Dr. Weisbard explained this as standard
procedure for the safety of all ██████████
patients. [Exhibits A-B and 3; Recording @ 1:16:48, 1:19:16-
1:19:25, 1:36:27, 1:39:43, 1:44:17, 1:49:39, 1:52:20,
1:55:24.]

Once the hospital evaluation and stabilization were completed, the Facility remained responsible for the Appellant's residential care. The Facility's persistent refusal to readmit the Appellant, who is in stable condition, when [REDACTED] at 5mg - the Appellant's current dose - is readily available to dispense upon her return, is contrary to its obligations under the regulation, which contemplate as "adequate and appropriate medical care" drug changes to meet her needs. 10 NYCRR 415.3(f)(1)(i). [Recording @ 2:03:25.]

When a resident is hospitalized, a nursing home is also required to establish and follow a written policy that includes "readmission" to the Facility if the resident requires nursing home care. 10 NYCRR 415.3(i)(3)(i) and (ii); 42 CFR 483.15(e)(1)(i)(A). In cases involving discharge due to "imminent danger," the notice must include a statement "that the resident may return to the first available bed if he or she prevails at the hearing on appeal." 10 NYCRR 415.3(i)(1)(v)(e)(5). Consistent with all these regulations is Department policy, which is provided to nursing home administrators and available online, requiring Facilities to "readmit the resident and/or develop an appropriate discharge plan" when transfers to hospitals are due to "episodes of acting out behavior." Transfer & Discharge Requirements for Nursing Homes, DAL NH 15-06, September 23, 2015. In not

properly effectuating such discharge planning, the Facility violated these requirements.

The Facility's failures also include not maintaining proper documentation in the Appellant's clinical record showing the basis for the transfer. Complete documentation by a physician made at or near the time of the transfer is required. 10 NYCRR 415.3(i)(1)(ii)(b). While there is a clinical note from the Facility's psychiatrist stating the history of events and suggesting other placement options, it is dated [REDACTED], 2020 - more than one month after the transfer - which hardly meets the requirement that a physician "ensure complete documentation" in the medical record "when the facility transfers or discharges" or "before, or as close as possible to the actual time of transfer or discharge." 10 NYCRR 415.3(i)(1)(ii)(b); 42 CFR 483.15(c)(2)(ii)(B); DAL-NH 19-07, August 20, 2019.

The Facility has the burden of proof to establish the appropriateness of its discharge plan. 10 NYCRR 415.3(i)(2)(ii)(b). The Facility claims any discharge planning is the Hospital's job, yet it cites no legal authority for shifting the burden of this responsibility to the hospital. Department policy specifically prohibits nursing homes from using hospitals as "final discharge locations." DAL NH 15-06, September 23, 2015. The Facility

has made no convincing argument that the Appellant's placement in a hospital - an acute care facility - meets her long-term needs and is an appropriate discharge plan. The hospital confirmed there is no psychological or medical need for the Appellant's hospitalization. The Appellant is clinically ready for discharge from the hospital to the Facility, where she can receive the long-term nursing home care she needs. [Recording @ 1:49:41.]

The discharge appeal is granted. Consistent with the verbal directive at the conclusion of the hearing, the Facility is ordered to readmit the Appellant.



Order

1. The Facility has failed to establish that its discharge was necessary or that the discharge plan is appropriate. The Facility was not authorized to discharge the Appellant; and

2. Pursuant to 10 NYCRR 415.3(i)(2)(i)(d), the Facility is directed to readmit the Appellant prior to admitting any other person.

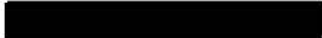

Dated: Albany, New York
January 31, 2020


DAWN MacKILLOP-SOLLER
Administrative Law Judge

To: 
c/o North Central Bronx Hospital

3424 Kossuth Avenue
Bronx, New York 10467



Ms. Sandra Berkoh, Director of Social Services
Morris Park Nursing Home
1235 Pelham Parkway
Bronx, New York 10469

Ms.  social worker
North Central Bronx Hospital

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